



Excise Taxes Newsletter

Welcome to the first edition of the Excise Taxes Newsletter. We hope you find the newsletter informative and helpful. Write to us if you have questions or comments. See page 8. — Editor

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All Tax and Fee Programs

1. Electronic Funds Transfer (EFT) Payments

If you pay any of the following taxes or fees and your average monthly tax or fee payment is at least \$20,000, you are required to begin making your payments electronically as of January 1, 2001:

- Alcoholic Beverage Tax
- Emergency Telephone Users Surcharge
- Energy Resources Surcharge
- Integrated Waste Management Fee
- Tire Recycling Fee
- Cigarette and Tobacco Products Tax

What is EFT?

EFT is a method for instructing financial institutions to transfer funds electronically from one account to another, thereby eliminating the use of paper checks. You can initiate your payments by telephone or through the use of a personal computer and modem, or you may arrange for payments to be made by your bank. Two payment types are allowed: Automated Clearing House (ACH) Debit and ACH Credit. Use of Fedwire is allowed in emergency situations only.

Can I voluntarily pay by EFT?

Yes. If your payments do not meet the \$20,000 threshold described above, you can apply to participate voluntarily.

Do I continue to file returns?

Yes. Even though you pay by EFT, you must continue to file your tax or fee returns on time. If you do not file a timely return, you are subject to a penalty.

How do I register?

To participate, you must complete an authorization agreement form for each special

tax or fee account you wish to register for EFT. Once you are registered, you can make prepayments, return payments, and accounts receivable payments electronically.

Where can I get more information?

Please contact the Excise Taxes Division (see page 8). We will send you information about payment method options and payment instructions. The information packet also includes the required authorization agreement form.

Businesses that are required to pay by EFT have been contacted and provided with a registration package. If you are a mandatory account and have not received a registration package, please contact us (see page 8).

2. Tax Collection and Enforcement Measures

If you receive a Demand for Tax Payment, it means you have a tax or fee liability that is due and payable by the date indicated. As explained below, it is important to pay the full amount by the due date. If you are unable to or if you have questions relating to your billing, please contact the office that sent you the billing for assistance.

What amount should I pay?

You should pay the entire amount owing. If you cannot, we recommend that you pay as much as you can now. By doing so, you will minimize the amount of interest you will owe because interest accrues on the unpaid tax or fees.

If you cannot pay the full amount, you should contact the office that sent you the billing as soon as possible to arrange for an alternative payment arrangement.

Payment Options if You Cannot Pay in Full

We will work with you to make other payment arrangements if you cannot pay in full at this time. If an alternative payment plan is approved, collectors will follow up to ensure that you are in compliance with the plan. If you cannot meet an established due date, you should contact the collector to avoid collection action.

You can ask to pay in installments. You may be eligible for an Installment Payment Agreement, which allows you to pay the full payment of your debt in smaller, more manageable

amounts. Installment payment agreements generally require equal monthly payments.

You can propose an Offer in Compromise. The Offer in Compromise Program is available only to taxpayers that no longer have an active account. If you agree with your tax billing, but do not have the means to pay the full amount, you can offer to pay a lesser amount under the Offer in Compromise Program. See the following article for more information on this subject.

What actions can be taken if I do not pay the debt?

If the debt is not paid, we are required by law to take collection actions. For example, the following actions can be taken:

- We may place a lien on your property.
- We may levy your property.
- We may levy your bank account.
- We may garnish your salary or wages.
- We may require a higher security deposit.
- We may issue a "till-tap" or "keeper" warrant.
- We may revoke your permit.
- We may cancel your DMV dealer license.
- Your alcoholic beverage license may be suspended.

Let us know if you believe your billing is wrong

If you believe the billing is wrong, let us know as soon as possible. Call the number on your billing or write to the Board office that sent you the billing, call our Information Center at 1-800-400-7115 or visit your local Board office.

We will honor your rights as a taxpayer

You have certain rights under the Taxpayers' Bill of Rights and due process laws. You have the right to

- Meet with a Board supervisor if you cannot resolve a dispute with the Board employee.
- Request copies of documentation from your board account file.
- Receive information and assistance in simple language to help you comply with the various tax and fee laws we administer.

Refunds

After you have paid the tax portion of your liability, you may file a claim for refund if you believe that you were overcharged or did not owe the liability.

Filing deadline. All claims for refunds must be filed within a specified time. Please review the statutes for the tax or fee at issue or contact the Excise Taxes Division for assistance (see page 8).

Items To Note

- We may share your tax information with other government agencies.
- We may contact a third party for information about your business affairs.
- We need to know if you are involved in bankruptcy proceedings.
- If you are no longer a business partner, your liability may be limited.
- You may not be required to pay if you qualify as an innocent spouse.

For more information, you may order a copy of publication 54, *Tax Collection Procedures*. Call our Information Center, 1-800-400-7115, or download a copy from www.boe.ca.gov.

3. Are You A Candidate for an Offer in Compromise?

Note: The following information applies to tax and fee payers who no longer have an active account with the Board and who cannot pay an overdue tax or fee liability.
— Editor

If you no longer have an active account with the Board and have an undisputed final tax liability that you cannot pay, you may be eligible for the Board's Offer in Compromise Program. Under this program, you can offer to pay less than the full amount of the liability.

To be eligible for this program, you cannot have an active account with the Board, and it must be established that you do not have, nor in the foreseeable future will have, income, assets or means to pay the full tax liability.

In evaluating whether to accept your offer, the Board will consider

- Your ability to pay
- The amount of equity in your property
- Your present and future income

- Your present and future expenses
- The potential for changed circumstances

Normally, the Board will make its decision whether to accept an offer in compromise within 120 days after receiving the complete offer. The Board's acceptance is subject to the approval of the Attorney General's Office.

The Board requires a deposit in full of the offered amount before the offer will be forwarded for final consideration. The Board evaluates the offer separately from any Internal Revenue Service or Franchise Tax Board offer.

If you are interested in proposing an offer in compromise, you must complete an application form BOE-490. You may call 1-800-400-7115 for a copy, or you may download a copy from the Internet, www.boe.ca.gov.

Submit your application and deposit along with supporting documentation to the Excise Taxes Division (see page 8 for address). Your request will be forwarded to the Offers in Compromise Unit for evaluation.

4. New Investigations Division

To effectively combat tax evasion in California, the Board has consolidated its various investigation units into a single Investigations Division. — Editor

The Investigations Division administers the Board's criminal investigations program. The Division plans, organizes, directs, and controls all criminal investigative activities for the various tax programs administered by the Board. Its goals are to identify tax evasion problems, recommend solutions to address those problems, identify new fraud schemes, and actively investigate and assist in the prosecution of crimes committed by individuals who are violating the laws administered by the Board.

Evasion takes place in all of the tax programs administered by the Board. Some examples of evasion include:

- Retailers and others who collect sales tax on sales but intentionally fail to report and pay the tax collected;
- Fuel retailers who blend waste petroleum products into gasoline or diesel and then sell the fuel as tax-paid but do not remit the taxes; and

- Retailers who sell untaxed cigarettes, untaxed tobacco products, cigarettes that are labeled "U.S. Tax Exempt, For Export Only" or have counterfeit tax stamps affixed to the packages of cigarettes.

The penalties for evasion vary with the tax program. Persons convicted of felony fraud offenses are subject to fines and/or imprisonment. The fraud penalty can be a fine of \$5,000 to \$20,000, or imprisonment for 16 months, two years or three years or both the fine and imprisonment at the discretion of the court.

If you suspect fraudulent activity, or believe a business should be reporting taxes and is not, you may call the Investigations Division at 916-324-0105; call our Tax Evasion Hotline at 1-888-334-3300; send a fax to the division at 916-324-1578; or write to:

Investigations Division
450 N Street, MIC:42
P.O. Box 942879
Sacramento, CA 94279-0042

Cigarettes and Tobacco Products

5. Cigarette Tax Stamps and Foreign-Manufactured Cigarettes

Effective May 5, 2000, section 30163 of the Revenue and Taxation Code has been amended to provide that cigarette distributors may no longer affix a California cigarette tax stamp to cigarette packages bearing a cigarette brand name that is a registered U.S. trademark of a "participating manufacturer" if the cigarettes are imported into the United States by anyone other than the "participating manufacturer."

A "participating manufacturer" is any manufacturer who has signed the Master Settlement Agreement (MSA) between cigarette and tobacco manufacturers and the attorneys general of 46 states.

More specifically, section 30163 makes it unlawful to affix a California cigarette tax stamp to any package of cigarettes that

- Does not comply with all requirements of the Federal Cigarette Labeling and Advertising Act (U.S.C. Sec. 1331 and following) for

the placement of labels, warnings, or any other information upon a package of cigarettes that is to be sold within the United States.

- Is labeled for sale outside the U.S. (for example, the label states "For Export Only," "U.S. Tax Exempt," or "For Use Outside the U.S.") or similar wording indicating that the manufacturer did not intend for the product to be sold in the United States.
- Has been altered by adding or deleting the wording, labels, or warnings set forth above.
- Is imported into the U.S. after January 1, 2000, in violation of Title 26, Section 5754 of the U.S. Code (a section of the Internal Revenue Code that requires cigarette packages marked for export either to be shipped back to the manufacturer or re-imported to an export warehouse for eventual shipment outside the U.S.).
- Bears a cigarette brand name which is a registered U.S. trademark of a participating manufacturer and the package was imported by anyone other than the participating manufacturer of that cigarette brand.
[Added by the passage of SB 1038.]

Distributors who are in violation of section 30163 may have their licenses revoked and are subject to misdemeanor charges. Cigarettes contained in packages that are stamped in violation of section 30163 are *subject to seizure by the BOE* and will be forfeited to the State.

For more information, please call the Excise Taxes Division (see page 8).

6. Sales to "Nonparticipating" Manufacturers

Senate Bill 822 (SB 822) enacts the model legislation that was included in the Master Settlement Agreement between certain cigarette and tobacco products manufacturers and the attorneys general of 46 states. The bill requires that companies that are not part of the Master Settlement and who manufacture or import cigarettes may have an obligation to make deposits into an escrow account.

As a result of this legislation, the Board is required to determine the quantity of cigarettes and roll-your-own tobacco sold in California by

nonparticipating manufacturers. A nonparticipating manufacturer is any tobacco products manufacturer that has not signed the Master Settlement Agreement. (The Boards' authority to gather this information is contained in Revenue and Taxation Code sections 30182 and 30183.)

Cigarette Distributor Reporting Requirements

Cigarette distributors are required to complete a new Cigarette Schedule F (form BOE-501-CFS) with their monthly tax reports. Cigarette distributors who import from nonparticipating manufacturers are required to provide the name, address, brand name and number of cigarettes sold in California of the nonparticipating manufacturer or first importer of foreign-manufactured cigarettes.

A Schedule F is required with each tax report even if the distributor does not import from a nonparticipating manufacturer or first importer. If there are no imports, "None" should be written on the schedule and returned with the monthly tax report. Failure to file Schedule F could result in revocation of your Cigarette Distributor license.

Note: Schedule F does not replace the Schedule A, "Distributors Record of Cigarettes Received." A cigarette distributor must continue to file a Schedule A with each monthly tax report.

Tobacco Products Distributor Reporting Requirements

Tobacco products distributors are required to complete a Tobacco Schedule T (form BOE-501-CTT) with each monthly or quarterly tax return. Distributors who import from nonparticipating manufacturers are required to provide the name, address, brand name and number of ounces of roll-your-own tobacco sold in California of the nonparticipating manufacturer or first importer of foreign-produced tobacco.

A Tobacco Schedule T is required with each tax return even if the distributor did not import from a nonparticipating manufacturer or first importer. If there were no imports, "None" should be written on the schedule and returned with the monthly or quarterly tax return. A list of participating manufacturers is included on the schedules. Failure to file Schedule T could

result in revocation of your Tobacco Products Distributors license.

For More Information

If you have questions about completing the schedules described above, please contact the Excise Taxes Division (see page 8).

If you would like a copy of SB 822, please visit the following website: <http://www.leginfo.ca.gov>.

7. Liability of Consumers Who Purchase Cigarettes from Outside California

The Excise Taxes Division administers the Cigarette and Tobacco Products tax, which, since the passage of Proposition 10, imposes a tax of 87 cents per package of 20 cigarettes and a 54.89 percent tax rate for tobacco products.

Information indicates that many consumers have begun purchasing cigarettes from outside California. This has been facilitated by the use of the Internet, mail order catalogs, cigarette buying clubs and other types of marketing that have surfaced — apparently in response to the demand for less expensive cigarettes. Regardless of the means of purchase, consumers are liable for the excise tax and the use tax due on all cigarettes and tobacco products purchased from out of state and shipped into California.

A federal law, commonly referred to as the Jenkins Act, requires any person selling or transferring cigarettes into California to report to the Board the name, address, brand, and quantity of cigarettes sold or transferred. This information is to be provided to the Board by the 10th day of each month for the previous month's sales or transfers.

Tax returns sent to consumers

The Excise Taxes Division registers each consumer for whom notification is provided and sends two returns for the consumer to file.

The consumer will receive a quarterly excise tax return and a use tax return to report their out-of-state purchases and remit the excise and use tax due on their purchase(s). The quarterly excise tax return is due on the 25th day of the month following the quarter, and the use tax return is due on the last day of the month following the purchase.

Alcoholic Beverage Tax Program

8. Who Is Required To Register?

The alcoholic beverage tax is a per-gallon excise tax collected on the sale, distribution, or importation of alcoholic beverages in California.

In general, if you are required to obtain one of the following licenses issued by the Department of Alcoholic Beverage Control (ABC), you are also required to register with the Board of Equalization.

- Manufacturer
- Winegrower
- Wine Blender
- Distilled spirits manufacturer's agent
- Rectifier
- Wholesaler
- Importer
- Customs broker
- On sale general brew pub

What are my tax reporting requirements?

All registered taxpayers, other than common carriers, must file a tax return on or before the 15th of the month following the period covered by the return. Common carriers must file a tax return on or before the first day of the second month following the monthly reporting period. Returns must be filed even if taxes are not due for the reporting period.

The penalty for filing a late return (including late returns for which no tax was due) is \$50.00 or 10 percent of the amount of tax due, whichever is greater. Late filers must include payment for the penalty (and interest if applicable) with their tax return.

After I register, how do I cancel my license and close out my account with the Board of Equalization?

You must contact the Alcoholic Beverage Control Board to initiate the cancellation of your Alcoholic Beverage license. A Board of Equalization alcoholic beverage account is not closed until written notification is received from the Alcoholic Beverage Control Board of the cancellation of all licenses. If an alcoholic beverage license is not cancelled but surrendered to the Alcoholic Beverage Control

Board, your account is placed in an inactive status effective the surrender date. Alcoholic beverage tax returns must be filed timely and must include all reporting periods up to the license cancellation or surrender date provided by the Alcohol Beverage Control Board.

Taxpayers who fail to file returns timely or not at all, through the cancellation/surrender date, will be assessed a penalty as stated previously.

9. Sales of Distilled Spirits to Instrumentalities of the US Armed Forces

Senate Bill 607, which is effective January 1, 2001, exempts the sale of *distilled spirits* to instrumentalities of the US armed forces from the alcoholic beverage tax. Sales of *beer and wine* continue to be subject to the alcoholic beverage tax.

Specifically, SB 607 adds section 32177.5 to the Revenue and Taxation Code. It states that no tax shall be imposed upon the sale of distilled spirits by brandy manufacturers, distilled spirits manufacturers, rectifiers, importers, and distilled spirits wholesalers to the following instrumentalities of the armed forces of the United States organized under the Army, Air Force, Navy, Marine Corps, or Coast Guard regulations and located upon territories within the geographical boundaries of the state:

- Army, Air Force, Navy, Marine Corps, and Coast Guard exchanges
- Officers', noncommissioned officers', and enlisted men's clubs or messes

Tire Recycling Fee

10. Recycling Fee Will Increase to \$1.00

As of January 1, 2001, retailers and others who collect the tire recycling fee must collect at the rate of \$1.00 per tire. This new rate will remain in effect until December 31, 2006, after which it will decrease to \$0.75 per tire.

Fee returns for transactions made in 2001 will reflect the increased rate.

The new rate is the result of the passage of Senate Bill 876 (Stats. 2000, ch. 838). SB 876 also changes the seller's reimbursement for collection costs from 2.5 cents per tire to 3 cents per tire.

11. What Should I Do if I Collect too Much Money from My Customer?

If you collect more than \$1.00 per tire from your customer as reimbursement for the Tire Recycling Fee, you are required to pay the excess amount to the state or you must reimburse your customer (the \$1.00 fee takes effect January 1, 2001).

Section 55221.5 of the Fee Collection Procedures Law applicable to the Tire Recycling Fee requires a feepayer to pay the state or reimburse the customer if

- A feepayer knowingly or mistakenly collects an amount that is not subject to the fee; or
- A fee collected is in excess of the amount due.

Integrated Waste Management Fee

12. Certain Inert Waste Is Considered Recycled and Not Subject to the Fee

As a result of recent legislation, the following inert waste materials are specifically considered recycled material and not subject to the fee when they are used, disposed of, or placed on sites that were former surface mining operations:

- rock • concrete
- brick • sand
- soil • cured asphalt

Specific Conditions

To qualify, the use, disposal of, or placement of the material must be done for the purpose of reclamation in accordance with a reclamation plan approved by the proper agency. Or, if the operation was conducted prior to January 1, 1976, the site must have had an agreement or permit with a city or county that provides for a fill appropriately engineered for the planned future use of the reclaimed mine site.

This legislation is in effect only until January 1, 2002, when it will expire, unless extended by future legislation.

Emergency Telephone Users Surcharge

13. How Billing Aggregators Can Remit the 9-1-1 surcharge

The Board of Equalization adopted Emergency Telephone Users Surcharge regulations 2401 and 2406 to clarify and put into operation the way the emergency telephone users surcharge may be collected and remitted to the state.

Billing aggregators act as a billing and collection agent for long distance service suppliers. Regulations 2401 and 2406 formally recognize the existence of billing aggregators and allow the aggregator to

- File a single return for each reporting period and act as an agent on behalf of multiple service suppliers
- Remit the surcharge in a single payment
- Provide information about the individual service suppliers on whose behalf the return was filed.

The new regulations clarify that the service supplier remains liable to collect and remit the surcharge, but authorizes the billing aggregator to act as its agent in collecting and remitting the surcharge to the state. In addition, the regulations set the minimum criteria for a supplier to appoint a billing aggregator and authorize a service supplier to use a billing aggregator for some, but not all of its collections. The Board requires notification of the agency arrangement.

Visit Us on the Internet

www.boe.ca.gov

Please visit our website and see what we have to offer. While on-line, you should also visit the State of California home page, www.ca.gov, for information about other state agencies and programs.

Information by e-mail . . .

Click on "How To Contact BOE"

Information about Board meetings and Board committees . . .

Click on "Board Meetings and Committee Information" (this link is found at the *bottom* of the page)

Forms and publications . . .

Click on "Forms and Publications," then on "Special Taxes"

Some of the publications you can download include the following:

General Information

- 17 Appeals Procedures (July 1999)
- 51 Guide to Board of Equalization Services (November 1999)
- 54 Tax Collection Procedures (March 2000)
- 91 Tire Recycling Fee (July 1997)
- 92 Alcoholic Beverage Tax (May 1999)
- 93 Cigarette and Tobacco Products Taxes (June 2000)

Revenue and Taxation Code Reprints

- 15 California Cigarette and Tobacco Products Tax Regulations (June 2000)
- 16 Alcoholic Beverages Tax Regulations (June 2000)

For More Information

Information Center

1-800-400-7115

Telephone devices for the deaf

1-800-735-2929 (TDD)

1-800-735-2922 (voice)

Excise Taxes Division. Write to us at: Excise Taxes Division, MIC:56, State Board of Equalization, P.O. Box 942879, Sacramento, CA 94279-0056. Or call us at 916-327-4208. Staff are available from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding State holidays.

Internet. Visit us at **www.boe.ca.gov** to obtain information on tax rates, publications, legislation, regulations, telephone numbers, education programs, public meetings, and so forth.

Tax Evasion Hotline. To report suspected tax evasion, please call toll-free, **1-888-334-3300**.

Copies of Legislative Bills. Write to the Legislative Bill Room, State Capitol, Room B-32, Sacramento, CA 95814. Or visit the following website: **www.leginfo.ca.gov**. The Bill Room does not provide copies of Board forms or publications.

Taxpayers' Rights Advocate. If you need help with a problem you have been unable to resolve at other levels, please contact the Advocate's office for assistance. Call **1-888-324-2798**.